

AMENDED IN ASSEMBLY APRIL 18, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2851

Introduced by Assembly Member DeVore

February 24, 2006

An act to amend Section 1351 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL’S DIGEST

AB 2851, as amended, DeVore. Common interest developments.

Existing law defines “condominium plan,” for purposes of the Davis-Stirling Common Interest Development Act, as consisting of specified components, including a certificate consenting to the recordation of the condominium plan signed and acknowledged by certain persons. Existing law authorizes a condominium plan to be amended or revoked by a subsequently acknowledged recorded instrument executed by all of the persons whose signatures were required on the certificate.

This bill *instead would authorize a condominium plan to be amended or revoked by a subsequently acknowledged recorded instrument executed by all of the persons whose signatures would be required on the certificate as of the date of the amendment or revocation for the condominium project. The bill would further authorize the amendment of a condominium plan to repair or replace one or more of the association’s major components, if owners having more than 50% of the votes of the association in a single class voting structure vote in favor of the amendment by a subsequently acknowledged and recorded instrument, executed as specified, for certain purposes.* The bill would set forth ~~applicable procedures~~

~~imposing~~ notice and recording requirements *for amendment of a condominium plan, and would provide that no amendment of a condominium plan is required for a unit owner to use any common area wall, floor, or ceiling area adjacent to the unit for installing utilities and other fixtures, as specified.* The bill would make other technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1351 of the Civil Code is amended to
2 read:
3 1351. As used in this title, the following terms have the
4 following meanings:
5 (a) “Association” means a nonprofit corporation or
6 unincorporated association created for the purpose of managing a
7 common interest development.
8 (b) “Common area” means the entire common interest
9 development except the separate interests therein. The estate in
10 the common area may be a fee, a life estate, an estate for years,
11 or any combination of the foregoing. However, the common area
12 for a planned development specified in paragraph (2) of
13 subdivision (k) may consist of mutual or reciprocal easement
14 rights appurtenant to the separate interests.
15 (c) “Common interest development” means any of the
16 following:
17 (1) A community apartment project.
18 (2) A condominium project.
19 (3) A planned development.
20 (4) A stock cooperative.
21 (d) “Community apartment project” means a development in
22 which an undivided interest in land is coupled with the right of
23 exclusive occupancy of any apartment located thereon.
24 (e) “Condominium plan” means a plan consisting of all of the
25 following:
26 (1) A description or survey map of a condominium project,
27 which shall refer to or show monumentation on the ground.
28 (2) A three-dimensional description of a condominium project,
29 one or more dimensions of which may extend for an indefinite

1 distance upwards or downwards, in sufficient detail to identify
2 the common areas and each separate interest.

3 (3) (A) A certificate consenting to the recordation of the
4 condominium plan pursuant to this title signed and
5 acknowledged by the following:

6 (i) The record owner of fee title to that property included in
7 the condominium project.

8 (ii) In the case of a condominium project that will terminate
9 upon the termination of an estate for years, the certificate shall be
10 signed and acknowledged by all lessors and lessees of the estate
11 for years.

12 (iii) In the case of a condominium project subject to a life
13 estate, the certificate shall be signed and acknowledged by all life
14 tenants and remainder interests.

15 (iv) The certificate shall also be signed and acknowledged by
16 either the trustee or the beneficiary of each recorded deed of
17 trust, and the mortgagee of each recorded mortgage encumbering
18 the property.

19 (v) Owners of mineral rights, easements, rights-of-way, and
20 other nonpossessory interests do not need to sign the
21 condominium plan. Further, in the event a conversion to
22 condominiums of a community apartment project or stock
23 cooperative has been approved by the required number of
24 owners, trustees, beneficiaries, and mortgagees pursuant to
25 Section 66452.10 of the Government Code, the certificate need
26 only be signed by those owners, trustees, beneficiaries, and
27 mortgagees approving the conversion.

28 (B) A condominium plan may be amended or revoked by a
29 subsequently acknowledged recorded instrument executed by all
30 the persons whose signatures would be required pursuant to
31 *clauses (i) to (v), inclusive, of subparagraph (A), as of the date of*
32 *the amendment or revocation for the condominium project.*

33 (C) ~~(i) Notwithstanding subparagraph (B), a~~ A condominium
34 plan may be amended ~~to repair or replace one or more of the~~
35 ~~association's major components, if owners having more than 50~~
36 ~~percent of the votes of the association in a single class voting~~
37 ~~structure vote in favor of the amendment. The~~ by a subsequently
38 acknowledged and recorded instrument, executed as follows:

39 (i) If the amendment by an association is for the purpose of
40 repairing, rebuilding, or reconstructing all or a portion of a

1 condominium project as described in its condominium plan due
2 to physical deterioration, component failure, or obsolescence,
3 failure to meet applicable legal standards, correction of defects,
4 damage, or destruction, the amendment shall be signed by the
5 association after obtaining the vote or written consent of the
6 owners who own a majority of the units described in the
7 condominium plan, provided that no exclusive-use common area,
8 such as a balcony, patio, or parking, of the owners who have not
9 consented to the amendment shall be eliminated, unless that
10 change is required by building codes or other legal requirements.

11 *The* association shall hold a meeting of owners to discuss the
12 change before a vote is held. At least 15 days prior to the
13 meeting, the owners shall receive copies of all of the following:

14 (I) The current condominium plan.

15 (II) A complete description of the amendment.

16 (III) Copies of any notice materials apprising the owners of the
17 meeting day, time, and location.

18 (IV) A short explanation of the reason for the amendment.

19 ~~(ii) A reasonably diligent effort shall be made to permit all~~
20 ~~eligible owners to vote on the amendment. The~~ *The* amendment
21 shall be reasonable and shall not eliminate any special rights,
22 preferences, or privileges of an owner or impair the security
23 interest of a mortgagee of a mortgage or the beneficiary of a deed
24 of trust. ~~An amendment is not effective pursuant to this~~
25 ~~subparagraph~~

26 *(ii) If the condominium project is limited to industrial or*
27 *commercial uses as provided in Section 1373, and the*
28 *amendment is for the purpose of moving the boundaries between*
29 *two or more units, the amendment shall be executed by all*
30 *owners of the affected units, the beneficiary or trustee of any*
31 *recorded deed of trust, the mortgagee of each recorded mortgage*
32 *encumbering the affected units, and the association.*

33 *(iii) If the condominium project is limited to industrial or*
34 *commercial uses as provided in Section 1373, and the*
35 *amendment is for the purpose of allowing the owner of a unit to*
36 *further subdivide the unit, unless the condominium plan or the*
37 *declaration provides additional restrictions on the subdivision of*
38 *units, the amendment shall be executed by the owner of the unit,*
39 *the beneficiary or trustee of any recorded deed of trust, and the*

1 mortgagee of each recorded mortgage encumbering the affected
2 unit.

3 (D) The division of a three-dimensional portion or apportion
4 of property into condominiums as provided in subdivision (e) of
5 Section 66427 of the Government Code is not an amendment to a
6 condominium plan creating the three-dimensional portion or
7 portions of the property, and one or more condominium plans for
8 the purpose of creating such a condominium project or projects
9 may be executed by the persons whose signatures would be
10 required for the execution of a condominium plan based on the
11 ownership of the three-dimensional portion or portions of the
12 property being divided.

13 (E) No amendment is required for the purpose of allowing a
14 unit owner to use any common area wall, floor, or ceiling area
15 consisting of a portion of a building adjacent to the unit or the
16 unit's exclusive-use common area for installing and maintaining
17 utilities or other services, installing electrical or other service
18 outlets located in the floor, walls, or ceiling, or installing
19 cabinets or other fixtures, windows, or skylights. The approval of
20 that use by the association, if required by the declaration, shall
21 permit that use and satisfy the requirements of Section 1363.07,
22 and no vote of the members shall be required.

23 (F) An amendment to a condominium plan is not effective until
24 the amendment has been recorded in the county in which the
25 common interest development is located. Upon recordation of the
26 amendment, the amendment shall have the same force and effect
27 as if the amendment were in compliance with every restriction
28 imposed by the previous the condominium plan. ~~The~~ If an
29 amendment is made pursuant to clause (i) of subparagraph (C),
30 the association shall ~~personally~~ deliver or mail a copy of the
31 amendment to each affected owner of the association, together
32 with a statement that the amendment has been recorded.

33 (f) A "condominium project" means a development consisting
34 of condominiums. A condominium consists of an undivided
35 interest in common in a portion of real property coupled with a
36 separate interest in space called a unit, the boundaries of which
37 are described on a recorded final map, parcel map, or
38 condominium plan in sufficient detail to locate all boundaries
39 thereof. The area within these boundaries may be filled with air,
40 earth, or water, or any combination thereof, and need not be

1 physically attached to land except by easements for access and, if
2 necessary, support. The description of the unit may refer to (1)
3 boundaries described in the recorded final map, parcel map, or
4 condominium plan, (2) physical boundaries, either in existence,
5 or to be constructed, such as walls, floors, and ceilings of a
6 structure or any portion thereof, (3) an entire structure containing
7 one or more units, or (4) any combination thereof. The portion or
8 portions of the real property held in undivided interest may be all
9 of the real property, except for the separate interests, or may
10 include a particular three-dimensional portion thereof, the
11 boundaries of which are described on a recorded final map,
12 parcel map, or condominium plan. The area within these
13 boundaries may be filled with air, earth, or water, or any
14 combination thereof, and need not be physically attached to land
15 except by easements for access and, if necessary, support. An
16 individual condominium within a condominium project may
17 include, in addition, a separate interest in other portions of the
18 real property.

19 (g) “Declarant” means the person or group of persons
20 designated in the declaration as declarant, or if no declarant is
21 designated, the person or group of persons who sign the original
22 declaration or who succeed to special rights, preferences, or
23 privileges designated in the declaration as belonging to the
24 signator of the original declaration.

25 (h) “Declaration” means the document, however denominated,
26 that contains the information required by Section 1353.

27 (i) “Exclusive use common area” means a portion of the
28 common areas designated by the declaration for the exclusive use
29 of one or more, but fewer than all, of the owners of the separate
30 interests and that is or will be appurtenant to the separate interest
31 or interests.

32 (1) Unless the declaration otherwise provides, any shutters,
33 awnings, window boxes, doorsteps, stoops, porches, balconies,
34 patios, exterior doors, doorframes, and hardware incident thereto,
35 screens and windows or other fixtures designed to serve a single
36 separate interest, but located outside the boundaries of the
37 separate interest, are exclusive use common areas allocated
38 exclusively to that separate interest.

39 (2) Notwithstanding the provisions of the declaration, internal
40 and external telephone wiring designed to serve a single separate

1 interest, but located outside the boundaries of the separate
2 interest, are exclusive use common areas allocated exclusively to
3 that separate interest.

4 (j) "Governing documents" means the declaration and any
5 other documents, such as bylaws, operating rules of the
6 association, articles of incorporation, or articles of association,
7 that govern the operation of the common interest development or
8 association.

9 (k) "Planned development" means a development, other than a
10 community apartment project, a condominium project, or a stock
11 cooperative, having either or both of the following features:

12 (1) The common area is owned either by an association or in
13 common by the owners of the separate interests who possess
14 appurtenant rights to the beneficial use and enjoyment of the
15 common area.

16 (2) A power exists in the association to enforce an obligation
17 of an owner of a separate interest with respect to the beneficial
18 use and enjoyment of the common area by means of an
19 assessment that may become a lien upon the separate interests in
20 accordance with Section 1367 or 1367.1.

21 (l) (1) "Separate interest" has the following meanings:

22 (A) In a community apartment project, "separate interest"
23 means the exclusive right to occupy an apartment, as specified in
24 subdivision (d).

25 (B) In a condominium project, "separate interest" means an
26 individual unit, as specified in subdivision (f).

27 (C) In a planned development, "separate interest" means a
28 separately owned lot, parcel, area, or space.

29 (D) In a stock cooperative, "separate interest" means the
30 exclusive right to occupy a portion of the real property, as
31 specified in subdivision (m).

32 (2) Unless the declaration or condominium plan, if any exists,
33 otherwise provides, if walls, floors, or ceilings are designated as
34 boundaries of a separate interest, the interior surfaces of the
35 perimeter walls, floors, ceilings, windows, doors, and outlets
36 located within the separate interest are part of the separate
37 interest and any other portions of the walls, floors, or ceilings are
38 part of the common areas.

39 (3) The estate in a separate interest may be a fee, a life estate,
40 an estate for years, or any combination of the foregoing.

1 (m) “Stock cooperative” means a development in which a
2 corporation is formed or availed of, primarily for the purpose of
3 holding title to, either in fee simple or for a term of years,
4 improved real property, and all or substantially all of the
5 shareholders of the corporation receive a right of exclusive
6 occupancy in a portion of the real property, title to which is held
7 by the corporation. The owners’ interest in the corporation,
8 whether evidenced by a share of stock, a certificate of
9 membership, or otherwise, shall be deemed to be an interest in a
10 common interest development and a real estate development for
11 purposes of subdivision (f) of Section 25100 of the Corporations
12 Code.

13 A “stock cooperative” includes a limited equity housing
14 cooperative that is a stock cooperative that meets the criteria of
15 Section 33007.5 of the Health and Safety Code.